

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
NO. 4:03-CR-14-H

UNITED STATES OF AMERICA, )  
                                  )  
                                  )  
                                  )  
                                  )  
v.                              )  
                                  )  
                                  )  
EMMANUEL JEROME GARDNER, )  
                                  )  
                                  )  
Defendant.                   )  
                                  )

**ORDER**

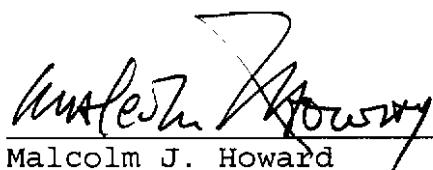
This matter is before the court on defendant's motion, brought pursuant to Rule 36 of the Federal Rules of Criminal Procedure, to correct a clerical error in the judgment.

Defendant argues that paragraph 16 of his Presentence Report (PSR) lists that defendant was convicted of robbery with a dangerous weapon. As explained previously to defendant and to his Unit Manager at the BOP facility in Bennettsville, South Carolina, defendant was not convicted of robbery with a dangerous weapon. Defendant actually pled guilty to the lesser offense of common law robbery, a Class G felony, and was sentenced to a term of 13-16 months' imprisonment. Attached to this order is a copy of the Judgment and Commitment Order from the Superior Court of Greene County, North Carolina.

While the presentence report incorrectly listed the offense as robbery with a dangerous weapon, the error did not in any way affect the sentencing guideline calculations or the court's judgment. The court therefore DENIES defendant's motion to modify the judgment made on the basis of the erroneous offense description.

However, review of this matter reveals that this matter may fall under the Standing Order Re: Motions for Post-conviction Relief Pursuant to United States v. Simmons, \_\_\_ F.3d \_\_\_ (4th Cir. Aug. 17, 2011) (en banc), EDNC 11-SO-3. Therefore, the Clerk is directed to serve a copy of this order on the Office of the Federal Public Defender for appointment of counsel for defendant Emmanuel Gardner in accordance with the provisions of the Standing Order.

This 9<sup>th</sup> day of November 2011.

  
\_\_\_\_\_  
Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
#26

STATE OF NORTH CAROLINA *Exhibit "A"*

98CRS1860

GREENE

County

SNOW HILL, NC, State Court

NOTE: (1) This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use ADC-CR-601 for other offenses.

In The General Court Of Justice  
Superior Court Division

## STATE VERSUS

STATE

COA

## JUDGMENT AND COMMITMENT

## ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340

Name Of Defendant  
EMANUEL GARDNER

Race

BLACK

Sex

MALE

DOB

05-20-1981

Def. Found  
 Not Indigent  
 AttorneyDef. Waived  
 AttorneyAttorney For Defendant  
WILLIAM SPENCE Appointed  
 RetainAttorney For State  
LES TURNERThe defendant  pled guilty to:  was found guilty by a jury of:  pled no contest to:

File No.(s)	Off	Offense Description	Offense Date	G.S. No.	F/M	C
8CRS1860		COMMON LAW ROBBERY	07-16-1998	14-87.1	F	

The Court:

1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 0. RECORD LEVEL:  II  III  IV

2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

1. makes no written findings because the prison term imposed is:  (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).  (b) for a Class A felony.  (c) for enhanced firearm penalty (G.S. 15A-1340.16A).  (d) for an adjudication as a violent habitual felon. G.S. 14-7.12.  (e) for drug trafficking offenses.

2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).

5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.

6. finds enhanced punishment from a Class 1 misdemeanor to a Class 1 felony.  G.S. 90-95(e)(3) (drugs);  G.S. 14-3(c) (trafficking);  7. finds no Extraordinary Mitigation.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant imprisoned

for a minimum term of:	for a maximum term of:	in the custody of:
13 months	16 months	
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole	<input type="checkbox"/> Death (see attached Death Warrant and Certificates)	<input checked="" type="checkbox"/> N.C. DOC.
<input type="checkbox"/> Class B1 Felony: Life Imprisonment Without Parole		<input type="checkbox"/> Sheriff pursuant to G.S. 15A-1352(b)
<input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole		<input type="checkbox"/> Other

The defendant shall be given credit for 0 days spent in confinement prior to the date of this Judgment as a result of this charge.

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:  
(NOTE: List the case number, date, county and court in which prior sentence imposed.)

(check all that apply)

1. The defendant shall pay the costs.

2. The defendant shall pay a fine of \$ \_\_\_\_\_.

The Court recommends:

3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h).  4. Psychiatric and/or psychological counseling.

5. Work Release.

6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the item and amounts set out below.

Fines	Costs	Restitution*	Reimbursement For Attorney Fee & Other	Total Amount Due
	\$116.00		\$425.00	\$541.00

\*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

The Court further recommends:

The Court does not recommend:

1. Restitution as a condition of post release supervision or work release.  2. Work release.

#### AWARD OF FEE TO COUNSEL FOR DEFENDANT

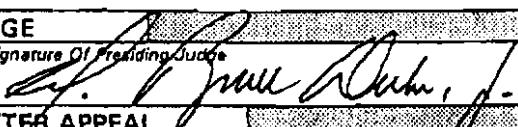
A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

#### ORDER OF COMMITMENT/APPEAL ENTRIES

It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

#### SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
04-12-1999	W. RUSSELL DUKE, JR.	

#### ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

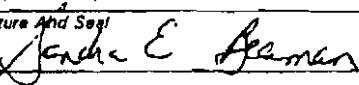
It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court

#### CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350).  
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605).  
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317).  
 Commitment Information Statement (DC-600).

Date	Signature And Seal	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Superior Clerk of Court
4-13-99		<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Superior Clerk of Court